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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 GARY GREENBURG,

9 Plaintiff,

v.

10 RED ROBIN INTERNATIONAL, INC,
11 and KRISTA COLEMAN,

12 Defendants.

CASE NO. C17-6052 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION TO
QUASH

13 This matter comes before the Court on Plaintiff Gary Greenburg's ("Greenburg")
14 motion for protective order to quash subpoenas *duces tecum* (Dkt. 10). The Court has
15 considered the pleadings filed in support of and in opposition to the motion and the
16 remainder of the file and hereby grants in part and denies in part the motion for the
17 reasons stated herein.

18 **I. PROCEDURAL AND FACTUAL BACKGROUND**

19 On December 18, 2018, Greenburg filed a complaint against Defendants Red
20 Robin International, Inc. ("Red Robin") and Krista Coleman for retaliation, wrongful
21 discharge, and failure to pay for wage and rest breaks. Dkt. 1.
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1 On March 29, 2018, Red Robin informed Greenburg of its intent to serve
2 subpoenas *duces tecum* on Greenburg's former employers requesting any and all
3 documents relating to Greenburg's employment. Dkt. 14 at 34–35. Specifically, Red
4 Robin intends to seek documents regarding payroll/income and compensation records,
5 employment applications, employment history, job description(s), employee evaluations
6 and performance appraisals, attendance records, and disciplinary records, including any
7 documentation relating to counseling or discipline. *See, e.g.*, Dkt. 14 at 60. Red Robin
8 asserts that Greenburg objected only to Red Robin seeking payroll/income and
9 compensation records. Dkt. 14 at 64–65 (email written by Greenburg's counsel
10 summarizing meet and confer).

11 On April 11, 2018, Greenburg filed the instant motion requesting that the Court
12 quash the subpoenas in total. Dkt. 10. On April 18, 2018, Red Robin responded. Dkt.
13 13. On April 15, 2018, Greenburg replied. Dkt. 15.

14 II. DISCUSSION

15 A. Meet and Confer

16 Every discovery motion must contain a certification that the parties met and
17 conferred regarding the dispute. LCR 37(a)(1). Relying on Greenburg's counsel's email,
18 Red Robin argues that Greenburg failed to meet and confer on all issues except the
19 request for payroll and income records. Dkt. 13 at 7. Greenburg counters that, while the
20 email did not specifically address all of the parties' disagreements, Greenburg objected to
21 and the parties discussed each category of documents requested by Red Robin. Dkt. 15 at
22 2–3. Greenburg's counsel has submitted a declaration to support this position. Dkt. 16.

1 The Court declines to engage in fact finding inquiry on this issue and will accept
2 counsel's declaration as sufficient evidence that the parties met and conferred on all
3 issues presented.

4 **B. Merits**

5 The parties essentially dispute the relevance of information from Greenburg's past
6 and subsequent employers. "Generally, employment records from separate employers are
7 not discoverable due to their highly private nature absent a specific showing by a
8 defendant as to their relevance." *Paananen v. Cellco P'ship*, C08-1042 RSM, 2009 WL
9 2057048, at *3 (W.D. Wash. July 15, 2009) (citing *Woods v. Fresenius Med. Care Group*
10 *of N.A.*, 2008 WL 151836, *1 (S.D.Ind. Jan.16, 2008); *Chamberlain v. Farmington Sav.*
11 *Bank*, 2007 WL 2786421, *1 (D.Conn. 2007)).

12 In this case, Red Robin fails to make a specific showing of relevance as to the
13 majority of information requested. For example, Red Robin asserts that these records
14 "may . . . reveal that [Greenburg] has a pattern of asserting frivolous claims of
15 discrimination." Dkt. 13 at 9. Red Robin, however, has failed to make any specific
16 showing that Greenburg has filed any other discrimination complaint against any other
17 employer. The Court declines to allow Red Robin's fishing expedition into Greenburg's
18 private records based on a hypothetical that can be determined with a simple request for
19 admission. If Greenburg admits that he has filed prior complaints, either formal or
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1 informal, then Red Robin has evidence to make the required showing.¹ In the absence of
2 such evidence, Red Robin has failed to meet its burden on the majority of its requests.

3 On the other hand, Greenburg has opened the door on emotional distress issues. In
4 *Abu v. Piramco Sea-Tac Inc.*, C08-1167RSL, 2009 WL 279036 (W.D. Wash. Feb. 5,
5 2009), “Plaintiff contend[ed] that as a result of defendant’s discriminatory treatment, she
6 suffered emotional distress, including a reduced ability to concentrate.” *Id.* at *2. The
7 Court concluded that “plaintiff’s subsequent attendance and ability to concentrate (as
8 reflected in her job performance) is relevant.” *Id.* Applied to this case, Greenburg
9 contends that Greenburg subsequently worked at Taco Time and BJ’s restaurant, but
10 shortly ended both jobs because of mental health issues resulting from Red Robin’s
11 treatment and termination of Greenburg. Dkt. 10 at 2–3. Similar to *Abu*, the Court
12 concludes that attendance records as well as disciplinary records from these two
13 employers are relevant to Greenburg’s emotional distress claim. Accordingly, the Court
14 concludes that Red Robin is entitled to this information because Red Robin has shown
15 that this limited information is relevant to *actual* issues in this case.

16 Although the Court quashes the subpoenas as to the majority of materials
17 requested, nothing in this order precludes Red Robin from subsequently requesting
18 relevant information based on a showing of relevance to actual issues in this case.

21 ¹ Greenburg appears to concede that he has made prior discrimination complaints to
22 employers. Dkt. 15 at 7. The concession, however, is made in Greenburg’s reply and requires
further investigation by Red Robin to confirm that such complaints were actually made before
issuing subpoenas on third party employers.

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Dated this 23rd day of May, 2018.

BENJAMIN H. SETTLE
United States District Judge